

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSHUA ANTONIO MCCLENDON,:

Plaintiff,

v.

C/O #1 JOHN DOE, *et al.*,

Defendants.

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1:19-cv-1832

Hon. John E. Jones III

ORDER

September 24, 2020

NOW THEREFORE, upon consideration of Defendants' motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6), and for summary judgment pursuant to Federal Rule of Civil Procedure 56 (Doc. 22), and in accordance with the Court's Memorandum of the same date, it is hereby ORDERED that:

1. Defendants' motion (Doc. 22) is DEEMED unopposed and GRANTED.
2. Defendants' Rule 12(b)(1) motion is GRANTED as follows:
 - a. The *Bivens* claims against the United States and the BOP, and against Defendant Beasley in his official capacity, are DISMISSED with prejudice.
3. Defendants' Rule 12(b)(6) motion is GRANTED as follows:
 - a. The *Bivens* claims against Defendant Beasley in his individual capacity are DISMISSED with prejudice.
 - b. The FTCA claim against the BOP and Defendant Beasley is DISMISSED with prejudice.

4. Defendants' Rule 56 motion is GRANTED as follows:
 - a. Alternatively, summary judgment on the *Bivens* claim against Warden Beasley based on McClendon's failure to exhaust his administrative remedies is GRANTED. The Clerk of Court is directed to ENTER judgment in favor of Defendant Beasley and against Plaintiff.
 - b. The Clerk of Court is directed to ENTER judgment in favor of the United States and against Plaintiff on the FTCA claim.
5. The Clerk of Court is further directed to CLOSE this case.
6. Any appeal from this order is DEEMED frivolous and not in good faith. *See* 28 U.S.C. § 1915(a)(3).

s/ John E. Jones III
John E. Jones III, Chief Judge
United States District Court
Middle District of Pennsylvania